


Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Maurie Montague, Court Services
From:  Brent Johnson, General Counsel
Re: Bankruptcy and Closing Cases
Date: March 26, 2008

This memorandum will memorialize discussions that we had concerning the effect of bankruptcy on closing cases. As we discussed, there are two important aspects related to bankruptcy filings. The first is the automatic stay and the second is the dismissal or discharge.

Under the automatic stay provisions of the bankruptcy code, when we receive notice of a bankruptcy filing we must stop all activities in a civil case. We cannot issue any writs, hold hearings, or issue decisions. The automatic stay lasts until a bankruptcy is dismissed or discharged. The length of the automatic stay can vary from case-to-case. The automatic stay can last anywhere from a few weeks to more than a year.

If a bankruptcy case is dismissed, activity on the case can resume. If an order of discharge is issued the debt subject to the civil action cannot be collected if the debt was listed in the discharge. There are, however, circumstances in which a debt is not listed in the discharge and the debt can then be collected. Even if a debt is discharged, that does not affect the automatic stay. After a case is no longer pending, a plaintiff can attempt to collect a debt, but the defendant could come back to the court and show that the debt has been discharged. In other words, if the court sets a hearing after receiving a discharge order, the court will not be liable under the automatic stay provisions, nor will the court be liable under any other provisions.

Once we receive notice of a bankruptcy filing, the court does not have any obligation to move a case forward. We can essentially wait until the plaintiff or the defendant comes back to the court and asks for additional action. If we have an order of dismissal or discharge in the case we can proceed, but if there is no order of dismissal or discharge, we would not be able to proceed. What this means is that once we receive a notice of bankruptcy filing we could administratively close the case subject to the case being reopened at a later date. This might

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make sense because, in the majority of cases, there will not be any additional activity in the case. Although there is a large percentage of cases that are dismissed, the majority of bankruptcy filings proceed to conclusion. Because the majority of cases proceed to conclusion, it might make more sense from a workload standpoint to administratively close a case and wait for those few cases that will be reopened, before resuming activity in a case.

Please let me know if you have any questions about this.